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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER				
SHANG, ANNAN Q				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/883,546

Applicant(s)

PAUL DONATO

Examiner

ANNAN Q. SHANG

Art Unit

2424

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

Continuation of Disposition of Claims: Claims pending in the application are 3-5,10-12,14-23,37,38,41,48,54,56-64,67-69,76-78,82-90,96,97,99-101,103-112,114,115,118-120,122,124-131 and 133-212.

Continuation of Disposition of Claims: Claims rejected are 3-5,10-12,14-23,37,38,41,48,54,56-64,67-69,76-78,82-90,96,97,99-101,103-112,114,115,118-120,122,124-131 and 133-212.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to amended/unamended claims have been considered but are not persuasive.

Applicant amends some claims and further argues that the prior arts of record do not teach the amended/unamended claims limitations (see page labeled 34 of 43+ of Applicant's Remarks).

In response, Examiner disagrees. Examiner notes Applicant's arguments/amendments however, Williams teaches monitoring and storing behavior log, which includes tuning (selecting, changing, switching, flipping or surfing of channels or station) during time periods of each day, compares and matches each user behavior log during the time periods of each day to provide channels/programs to the user including suggesting channels/programs to the user during this time interval, time of the day, day of the week or day of the month (col.5, lines 8-36, line 60-col.6, line 7, lines 46-60, col.7, 63-col.8, line 42, line 64-col.9, line 63, col.12, lines 5-14, col.13, line 55-col.14, line 24 and col.15, lines 3-40). Williams, performs various action for users not currently viewing an in-progress program including adding audience members to programs of interest without prompting the audience member, etc, but silent as to determining a count of audience members of a program being viewed at a first location and other locations and adding the audience member to a log of audience members to the program being viewed within time a predetermined time (part of day, week, month, etc.,) intervals at the same time. However, **Maissel** discloses a television network, which

monitors audience members, viewing a program or before viewing of the program, at various locations, by requesting viewers to enter their personal identification information (PIN) (figs.1-8, [0045], [0171], [0221], [0231] and [0244-0249]). Maissel, processing of users information is done within predetermined time intervals (part of day, week, month, etc.) and provides real-time alerts to audience members as to the number of audience viewing a particular program(s) at a particular time period(s). Hence, Applicant's arguments are not persuasive. The amended/unamended claims do not overcome the prior arts of record as discussed below. **This office action is made final.**

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3-5, 10-12, 14-23, 37, 38, 41, 48, 68-69, 76-78, 82-90, 96, 97, 99-101, 105-112, 114-115, 118-120, 122 and 126-131 and 133-212 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Williams et al (5,945,988)** and in view of **Maissel et al (2003/0088872)** previously cited.

As to claims 182-183 and 184-212 note the **Williams** reference figures 1-3, discloses method and apparatus for automatically determining and dynamically updating user preferences in an entertainment system and further discloses (A1) a

method comprising...: (A2) An article of manufacture...cause a machine to...: (A3) An Apparatus comprising...: (A4)

A memory (Profile Database); A processor (System Controller "SC" 104) coupled to the memory (figs.1 and 5) and a programmed to:

Determining a count of audience members of a program being viewed, by a viewer at a display (TV receiver or Computer monitor) within a predetermined period(s) of the day, week, months, etc., (figs.1-3, col.5, lines 8-36, line 60-col.6, line 7, lines 46-60, col.7, 63-col.8, line 42, line 64-col.9, line 63, col.12, line 3-14, col.14, lines 4-32 and col.15, lines 4-40), note that the system determines a count of the number of user(s) not currently viewing the program being viewed by a current user and performs an action (recording, etc..) for the user/users not currently viewing the program.

Determining a probability that an unidentified person is in the audience of the program when the count is different from a number of audience members recorded in a log of audience members for the program; selectively providing a prompt for an audience identification based on the probability (col.8, line 64-col.9, line 63, col.12, lines 5-14, col.13, line 55-col.14, line 24 and col.15, lines 3-40); note that the system (SC-104) adds the audience member to a log of audience members for the program when the probability is greater than a threshold; Prompts the audience member to enter an audience member identification when the probability is less than a threshold; note that S-100 stores profiles of users (col.5, line 30-col.6, line 1+) and includes Camera 120 (col.3, lines 58-63) to detect a user presenting watching a TV channel/program at the receiver and SC-104 monitors a user behavior log (B-log), inputs or interactions (col.8,

line 59-col.9, line 1+) to automatically determine, using statistically generated information of the B-log and the information received from the Camera, a user at the receiver, furthermore if an audience member watches a particular program more frequently the audience member is added to the list of audience members and store on a remote server for later access if necessary; note further that SC-104 identifies whether (B-log) or "tuning habits, history and style," such as a user input or interactions to a tuned channel(s)/station, video image of the user, audio recognition, rate of changing channels, etc., col.8, line 54-col.9, line 21, matches that of the data for any of the known users and calculates a user metric for information in B-log and the current system settings as well as each of the known system users, and if there is greater than a predetermined probability "a threshold" that the information in the B-log matches the user profile of one of the known users, SC-104 determines that a match has been made and configures S-100 in accordance with user profile database 700; if SC-104 identifies the most likely system user, i.e., a state where "the audience of the receiver is less than a threshold" or B-log is less than the threshold (a new user, col.8, lines 49-65, or known user), the SC-104 displays a first identified picture of known pictures or audio prompts requesting that the user affirmatively respond via remote control, voice command, etc., (col.9, line 64-col.10, line 12), note further that SC-104 compares audio, video image of the user, B-log, profiles data, etc., (col.10, lines 37-59) and at any point in time displays prompts to the user for identification if a generator B-log, stored profile, video image, etc., or any user settings differs from the system settings; furthermore even if a user changes his/her settings (profile and B-log, col.3, lines 4-23 and col.8, line 56-col.9, line

42), SC-104 automatically and dynamically determines a user (col.15, lines 26-40), and further determines whether the audience member has already entered the audience member identification, adding the audience members for the program when the audience member enters the audience member identification and suppressing prompting of the audience member when the audience member has already entered the audience member identification, using the various methods.

Uploading the log of audience members to a data collection server (Remote Server), the data collection server to receive one or more logs of audience members from one or more additional locations (col.8, lines 12-42, col.10, line 60-col.11, line 30 and col.14, lines 25-32).

Williams, performs various action for users not currently viewing an in-progress program including adding audience members to programs of interest without prompting the audience member, etc, but silent as to determining a count of audience members of a program being viewed at a first location and other locations and adding the audience member to a log of audience members to the program being viewed within time a predetermined time (part of day, week, month, etc.,) intervals at the same time.

However, **Maissel** discloses a television network, which monitors audience members, viewing a program or before viewing of the program, at various locations, by requesting viewers to enter their personal identification information (PIN) (figs.1-8, [0045], [0171], [0221], [0231] and [0244-0249]), note that the processing of users information is done within predetermined time intervals (part of day, week, month, etc.)

which partially overlaps and provides real-time alerts to audience members as to the number of audience viewing a particular program(s) at a particular time period(s).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Maissel into the system of Williams to count or monitor the number viewers at a location in order to efficiently process and generate percentage of audience viewing a particular program at a location and further provide the audiences with alerts as to the percentage of audience viewing a particular program.

As to claim 3, William further discloses waiting for passage of a predetermined amount of time from a previous prompting decision, and determining a second probability that a second audience member is also in the audience of the program being at the first location (col.9, lines 43-53 and line 64-col.10, line 12).

Claim 4 is met as previously discussed with respect to claim 182.

As to claim 5, William further discloses prompting the audience member to enter the audience member identification upon detection that the receiver has been turned on (col.9, line 15-30, lines 43-53 and line 64-col.10, line 25).

Claim 10 is met as previously discussed with respect to claim 182.

Claim 11 is met as previously discussed with respect to claims 182.

Claim 12 is met as previously discussed with respect to claim 182.

As to claim 14-15, Williams further discloses storing audience identification data in tables, collapsing the tables if the tables contain insufficient data to make a prompting decision (col.5, line 30-col.6, line 23) and collapsing of the tables is weighted depending

upon age of the audience member identification data (col.6, line 23-32 and col.10, lines 26-36).

Claim 16 is met as previously discussed with respect to claim 182.

Claims 17-23 are met as previously discussed with respect to claim 182. William further teaches monitoring profiles and B-log data for during a predetermining time periods (col.6, lines 52-64 and col.7, lines 14-41) and further uses SIDs to identifies various classes of programs, sports, movies, drama, etc., and present to each user identified EPG specific to a user's profile and B-log information (figs.7-8 and col.5, line 39-col.6, line 56 and col.7, lines 14-51).

Claims 37-38 are met as previously discussed with respect to claims 14-15.

Claim 41 is met as previously discussed with respect to claim 182.

Claim 48 is met as previously discussed with respect to claim 182.

Claim 68 is met as previously discussed with respect to claim 182.

As to claim 69, Williams further monitors tuning style, which comprises velocity or the rate of changing channels and tuning acceleration (col.7, line 63-col.8, line 11 and col.9, lines 43-63).

Claim 76 met as previously discussed with respect to claims 14-15.

Claim 77 met as previously discussed with respect to claims 182 and 69.

Claim 78 is met as previously discussed with respect to claim 69.

Claims 82-88 are met as previously discussed with respect to claims 17-23.

Claim 89 is met as previously discussed with respect to claim 3.

Claim 90 is met as previously discussed with respect to claim 5.

Claim 96 is met as previously discussed with respect to claim 182.

Claim 97 is met as previously discussed with respect to claim 5.

Claim 99 is met as previously discussed with respect to claims 7-8.

Claim 100 is met as previously discussed with respect to claim 20.

Claim 101 is met as previously discussed with respect to claim 69.

Claims 105-107 are met as previously discussed with respect to claim 69.

Claims 108-112 are met as previously discussed with respect to claim 182.

Claim 114 is met as previously discussed with respect to claims 14-15.

Claim 115 is met as previously discussed with respect to claims 14-15.

Claim 118 is met as previously discussed with respect to claims 7-8.

Claim 119 is met as previously discussed with respect to claim 182.

Claim 120 is met as previously discussed with respect to claim 5.

Claim 122 is met as previously discussed with respect to claim 69.

Claim 125 is met as previously discussed with respect to claim 20.

Claims 126-127 are met as previously discussed with respect to claim 69.

Claims 128-131 are met as previously discussed with respect to claim 182.

Claim 133 is met as previously discussed with respect to claim 14.

Claim 134 is met as previously discussed with respect to claims 182 and 69.

Claims 135-136 are met as previously discussed as to claims 182 and 69.

Claims 137-138 are met as previously discussed with respect to claim 182.

Claims 139-141 are met as previously discussed with respect to claim 69.

Claims 142-143 are met as previously discussed with respect to claim 182.

Claim 144 is met as previously discussed with respect to claims 182 and 69.

Claims 145-146 are met as previously discussed as to claims 182 and 69.

Claims 147-151 are met as previously discussed as to claims 182 and 16.

Claim 151 is met as previously discussed with respect to claim 69.

Claims 152-154 are met as previously discussed with respect to claim 182.

Claims 155-156 are met as previously discussed as to claims 182 and 69.

Claim 157 is met as previously discussed with respect to claim 69.

Claims 158-160 are met as previously discussed as to claims 182 and 16.

Claim 161-162 are met as previously discussed as to claims 182 and 69.

Claim 163 is met as previously discussed with respect to claim 69.

Claims 164-166 are met as previously discussed as to claims 182 and 16.

Claim 167 is met as previously discussed as to claim 182 and 69.

Claims 168-169 are met as previously discussed as to claims 182 and 69.

Claims 170-171 are met as previously discussed as to claims 182 and 16.

Claims 172-176 are met as previously discussed as to claims 182 and 16

Claims 177-181 are met as previously discussed as to claims 182 and 16.

As to claims 194-212, are met as previously discussed with respect to claims 182-183.

4. Claims 54, 56-64, 103-104 and 124-125 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Williams et al (5,945,988)** in view of **Maissel et al (6,637,029)** and further in view of **Eldering et al (6,457,010)**

As to claims 54 and 57, William as modified by Maissel, teach the claim limitations as previously discussed with respect to claim 1, but fails to explicitly teach applying a heuristic to determine where the audience member is in an audience of the receiver.

However, in the same field of endeavor **Eldering** teachings client-server subscriber characterization system and applies a heuristic to a user (col.13, lines 3-20 and col.14, lines 6-17).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Eldering into the system of William as modified by Maissel to quickly determine a user's profile or B-log and configure the system to provide the specific service(s) to each user.

Claim 56 is met as previously discussed with respect to claim 7.

Claims 58-64 are met as previously discussed with respect to claims 17-23.

Claim 67 is met as previously discussed with respect to claim 14.

As to claims 103-104, William as modified by Maissel, teach all the claimed limitations as previously discussed with respect to claim 91 above, but fail to explicitly teach the claimed limitations of claims 103-104, which is met as previously discussed with respect to claims 1 and 54-55.

As to claims 124-125, William as modified by Maissel, teach all the claimed limitations as previously discussed with respect to claim 116 above, but fail to explicitly teach the claimed limitations of claims 124-125, which is met as previously discussed with respect to claims 1 and 54-55.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Link et al (6,289,514) disclose system and method for the near-real time capture and reporting of large population consumer behaviors concerning TV use.

Dufresne et al (5,373,315) disclose TV audience data gathering.

Gilley et al (4,769,697) disclose passive TV audience measuring systems.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Annan Q. Shang** whose telephone number is **571-272-7355**. The examiner can normally be reached on **700am-400pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC) at 866-217-9197 (toll-free)**. If you would like assistance from a **USPTO Customer Service Representative** or access to the automated information system, **call 800-786-9199 (IN USA OR CANADA) or 571-272-1000**.

/Annan Q Shang/

Primary Examiner, Art Unit 2424

Annan Q. Shang